

REMARKS/ARGUMENTS

This is a response to the Office Action dated December 16, 2009. Claims 1-10 are pending in the present application with claim 1 being in independent form. Applicant has amended claim 1 herein in order to further clarify the features of the present application. New claim 1 has been added.

Applicant appreciates the courtesy extended to Applicant's undersigned attorney during the recent telephone interview. During the telephone interview, a proposed amendment to claim 1 was discussed, however, no agreement was reached as to the patentability of the amended claim.

Claims 1-6, 7, 9 and 10 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,148,912 to Nozawa in view of U.S. Patent No. 6,041,477 to Rentsch et al. (hereinafter "Rentsch") and U.S. Patent No 6,460,412 to Smith et al. (hereinafter "Smith"). Applicant respectfully requests reconsideration of this rejection.

The Examiner argues that Nozawa discloses substantially all of the features of claim 1, for example, of the present application. The Examiner concedes, however, that Nozawa does not disclose sealing means directly contacting the neck of the bottle. The Examiner argues that the closure of Smith discloses this element. The Examiner further concedes that Nozawa and Smith fail to disclose that the body and lid are separated by a circumferential gap, but alleges that Rentsch discloses this feature. Applicant respectfully disagrees.

As was noted in Applicant's previous responses, none of the references cited by the Examiner disclose a closure that is "moulded in closed position" as is required by claim 1 of the present application. In each of the references cited by the Examiner, the closure, or cap, is molded in an open position. Indeed, it would not have been possible to mold the caps disclosed in the art cited by the Examiner in a closed position as was explained in Applicant's previous responses.

For example, looking at the figures of Nozawa, it is clear that the body 1 including the top surface with the opening 2 formed therein could not have been molded with the closure being in a closed position as there would be no way to provide material to form the upper surface in the mold if the closure were molded in the closed position. Thus, not only does Nozawa fail to disclose a closure molded in the closed position, as required by claim 1, but the closure of Nozawa could not be molded in a closed position.

One advantage provided by molding a closure in the closed position is that it takes up less room, and thus, allows for more closures to be molded at a time. This results in a substantial increase in production efficiency.

The Examiner argues that the use of a two stage molding method may be used to mold a closure such as that disclosed in Nozawa in the closed position. First, using a two step molding process would negate the increased efficiency that is provided by molding the caps in their closed position as described above, since it would essentially double the number of steps required to mold each piece. Thus, there would be no advantage, and thus, no apparent reason to use the two step process proposed by the Examiner. Accordingly, it would clearly not be obvious to use such a process.

Further, neither Nozwa, nor any of the references relied on by the Examiner to reject claim 1 show or suggest molding a closure in the closed position at all, much less the two step process proposed by the Examiner. Further, as was previously explained above and in Applicant's previous responses, the closures that are cited by the Examiner, in fact, could likely not be molded in the closed position. Thus, not only does the prior art cited by the Examiner not disclose molding closures in the closed position, it teaches away from such molding since it would likely be impossible to form the closures disclosed therein while molding them in the closed position.

For this reason alone, it is clear that claim 1, and the claims depending therefrom, are patentable over the cited art.

Further, none of the references cited by the Examiner show or suggest "a ring shaped body," as is further required by claim 1. The Examiner argues that the body 1 of Nozawa corresponds to the "ring shaped body" of claim 1. This is incorrect.

The body 1 of Nozawa is not a ring shape at all. The openings on both sides of a ring have substantially the same diameter. In contrast, in Nozawa, the top part of the lid 1 is closed by the upper surface, or top shelf, in which the very small opening 2 is formed. The annotated figure attached hereto as Exhibit A includes a three-dimensional rendering of the closure in Nozawa based on the drawings therein. It is clear that the body 1 is not ring shaped, since it is substantially closed on the top surface by the "Top Deck" illustrated in the three-dimensional rendering.

While Applicant believes that this is clear, in an effort to advance prosecution of the present application, Applicant has amended claim 1 herein in order to further specify that the ring shaped body has “an opening extending in an axial direction and having substantially the same diameter at both ends” and to further specify that the lid is “positioned immediately adjacent to the opening at a top open end of the ring shaped body when the lid is in the closed position.” This cannot be the case in Nozawa, since the upper surface of the body 1 is positioned between the lid and the lower part of the body 1, and thus, the lid cannot be “immediately adjacent to the opening at the top open end.”

In addition, Applicant has also amended claim 1 to specify that the lid has “substantially the same diameter as the ring shaped body.” None of the references cited by the Examiner are believed to show this feature.

Further, none the references cited by the Examiner show or suggest that “the body and the lid are separated to each other by a circumferential gap,” as is required by claim 1. The Examiner argues that element 15 of Rentsch corresponds to the circumferential gap of claim 1. This is incorrect. Element 15 of Rentsch corresponds to a “sealing plane.” There is no mention anywhere in Rentsch of any sort of circumferential gap, nor is there any disclosure in Rentsch to suggest that the “sealing plane” is a gap of any kind, much less a circumferential gap. Indeed, there is only one brief mention of the sealing plane at all in Rentsch, and there is no discussion of any sort of gap associated therewith.

Accordingly, Applicant respectfully submits that claim 1, and the claims depending therefrom, are patentable over the cited art for at least the reasons described above.

Claim 8 remains rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Nozawa in view of Rentsch and further in view of U.S. Patent Publication No. 2002/0079282 to Harrold et al. (hereinafter “Harrold”). Applicant respectfully requests reconsideration of this rejection.

Claim 8 depends from claim 1. Applicant believes that claim 1 is patentable over Nozawa and Rentsch for at least the reasons described above. Further, Applicant believes that claim 1 is patentable over Nozawa, Rentsch and Harrold, since Nozawa, Rentsch and Harrold, either alone or in combination, fail to show or suggest the patentable features of claim 1 described above.

Accordingly, it is respectfully submitted that claim 1, and the claims depending therefrom, including claim 8, are patentable over the cited art for at least the reasons described above.

New claim 11 has been added and similarly requires a lid "positioned immediately adjacent to the opening at the top end of the ring shaped body when the closure is in the closed position." Applicant respectfully submits that new claim 11 is also patentable over the cited art at least because the cited art does not disclose this feature.

In light of the remarks and amendments made herein, Applicant respectfully submits that claims 1-11 are patentable over the cited art and are in condition for allowance.

Favorable reconsideration of the present application is respectfully requested.

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DAM/KJB

Respectfully submitted,



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